

REMARKS

Claims 1-32 are pending in the application.

Claims 1-32 have been rejected.

No Claims have been amended, and reconsideration is respectfully requested.

I. **CLAIM OBJECTION**

Claim 3 was objected to. The status identifier has been appropriately changed to reflect the claim amendment made in the prior response.

II. **REJECTIONS UNDER 35 U.S.C. § 103**

Claims 1-5, 8-9, 12-16, 18, 20-22, 25-28 and 30-32 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267) and in further view of Christianitytoday.com. Claims 6-7, 10, 17 and 23 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267), in further view of Christianitytoday.com, and in further view of Elliott (US Patent 6,446,053). Claims 11, 19 and 29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adams (US Patent 6,154,730) in view of Hertel-Szabadi (US Patent Application Publication 2003/0233267), in further

view of Christianitytoday.com, in further view of Elliott (US Patent 6,446,053) and in further view of Wakelam (US Patent 6,859,768). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach

or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142.

The prior Advisory Action (dated October 31, 2006) is accurate in that Adams discloses "*a system for financing a stadium facility to be constructed*" (citing Adams, Col. 1, lines 41-42). See, Advisory Action dated October 31, 2006, Continuation Sheet. Applicant agrees that Adams discloses a system for financing a stadium facility, and is limited so. Importantly, Adams does not teach or suggest or place any importance on the "portions" or "facilities" of the stadium facility - which the Office Action argues is disclosed in Adams. Because Adams operates on a macro level for a single facility, there is no reason or necessity for Adams to identify a plurality of facilities within such complex or place any importance thereon. Therefore, Adams fails to disclose, teach or suggest any desire, necessity, or importance for generating a schedule of the construction projects (for facilities within the complex) using a determined revenue and costs of the stadium.

The same Advisory Action (dated October 31, 2006) is also accurate in noting the Hertzel-Szabadi describes that "the project tasks 110 define activities and phases to be performed in the project 105. For example, for a construction project examples of projects tasks 110 may include preparing blue prints, obtaining the proper permits, preparing the foundation, ordering lumber, hiring sub-contractors, etc." (citing Hertzel-Szabadi, Paragraph 0019). See, Advisory Office Action dated

October 31, 2006, Continuation Sheet. Thus, Hertzel-Szabadi merely describes that timelines for specific tasks of a construction project have to be scheduled for that project (paragraph 0003).¹

Importantly, the prior Office Actions do not address all of Applicant's recited claim language - notably the limitation that the schedule of construction projects - are generated using the determined potential revenue and cost information. In contrast to Hertzel-Szabadi, Applicant uses the determined potential revenue and cost information to generate the schedule for the construction projects. It appears that Hertzel-Szabadi plans the structures, costs, revenues, resources and timelines at the same time (and revises them periodically) and the scheduling of the timelines is not based on a previously determined potential revenue stream (from one of the facilities within the complex) and the previously determined cost (of one of the facilities) - as described and claimed by the Applicant.

The present Office Action further argues that the Christianitytoday.com reference "discloses a formula used to compute the size of the church complex; and spreading the calculations throughout the sanctuary, meeting rooms, nurseries, and educational space of your church complex (page 2); and form a committee to decide how much money can be raised for the building project (page 4)."

¹ Hertzel-Szabadi discloses a project management method in which a "project" may be thought of as "a collection of activities and tasks designed to achieve a specific goal." Hertzel-Szabadi, Paragraph 0004. Thus, Hertzel-Szabadi appears to describe conventional project management in which a "project" is broken down into "phases." Hertzel-Szabadi, Paragraph 0004. Hertzel-Szabadi does not disclose or describe generating a schedule of the construction projects (a construction project for each facility) using the previously determined potential revenue of at least one of the facilities and the determined cost of at least one of the facilities.

Office Action, page 3. Again, the Office Action accurately describes the teachings of the Christianitytoday.com reference.

The Office Action then argues that it would be obvious to modify Adams to include the feature of Hertzel-Szabadi and Christianitytoday.com in order to give reasonable and reliable quotations. However, the Christianitytoday.com reference does not disclose, teach or suggest generating a schedule of construction projects [one for each facility] using the determined potential revenue and cost information.² Christianitytoday.com discloses (1) a formula for determining a size of the facilities (based on square footage calculation per person) and (2) that a committee should be formed to determine how much money can be raised for the building project. This is not the same as, or even similar to, generating a schedule of construction projects based on the determined potential revenue and determined costs.

Therefore, Applicant respectfully submits that the proposed combination of Adams Hertzel-Szabadi does not disclose, teach or suggest all elements of independent Claims 1, 15, 22 and 24.³

² Neither does Hertzel-Szabadi, as noted above.

³ Nor has there been established any motivation to combine these two (or three) references. The Applicant respectfully submits that the alleged motivation to combine references presented by the Office Action is insufficient to establish a finding of *prima facie* obviousness. The Applicant respectfully submits that the alleged motivation to combine references is not provided with specificity. The general fact that two references are concerned with a similar general technical area does not, without more, provide the necessary motivation to combine the references. The Applicant respectfully submits that the alleged motivation to combine references has been assumed by “hindsight” in light of the existence of the Applicant’s invention. It is unclear how one skilled in the art would be motivated to combine a patent related to general project management with a patent describing a “system for financing” a stadium and/or a publication that describes a formula for determining the square footage of a church (based on a per person fixed amount) or a committee for determining how much money can be raised.

Accordingly, the Applicant respectfully requests withdrawal of the § 103 rejections of Claims 1-32.⁴

III. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

⁴ With respect to the other rejections of certain dependent claims, including new Claim 32, none of the other references supply the deficiencies that have been previously pointed out in the main proposed combination.

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If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at rmccutcheon@munckbutrus.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Munck Butrus Deposit Account No. 50-0208.

Respectfully submitted,

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